



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 09I of 09

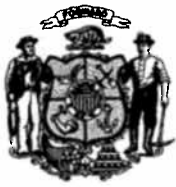
The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU


RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/08/2006 (Per: GMM)




Appendix A ... Part 09 of 12




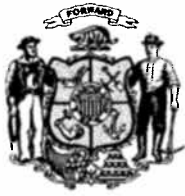
 The 2005 drafting file for LRB 05-4299

has been transferred to the drafting file for

2007 LRB 07-0174

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2005 – 2006 LEGISLATURE

LRB-4299/P1
GMM:lmk:pg

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 **AN ACT *to repeal*** 48.21 (5) (d) 2., 48.21 (5) (d) 3., 48.32 (1) (c) 2., 48.32 (1) (c) 3.,
2 48.355 (2d) (c) 2., 48.355 (2d) (c) 3., 48.357 (2v) (c) 2., 48.357 (2v) (c) 3., 48.365
3 (2m) (ad) 2., 48.981 (1) (cs), 938.02 (18g), 938.21 (5) (d) 2., 938.21 (5) (d) 3.,
4 938.32 (1) (d) 2., 938.32 (1) (d) 3., 938.355 (2d) (c) 2., 938.355 (2d) (c) 3., 938.357
5 (2v) (c) 2., 938.357 (2v) (c) 3. and 938.365 (2m) (ad) 2.; ***to renumber*** 938.02 (9m);
6 ***to renumber and amend*** 48.20 (8), 48.21 (5) (d) 1., 48.23 (2), 48.273 (1), 48.32
7 (1) (c) 1., 48.355 (2d) (c) 1., 48.357 (2v) (c) 1., 48.365 (2m) (ad) 1., 938.21 (5) (d)
8 1., 938.273 (1) (c) (intro.), 938.32 (1) (d) 1., 938.355 (2d) (c) 1., 938.357 (2v) (c)
9 1. and 938.365 (2m) (ad) 1.; ***to amend*** 46.515 (1) (d), 48.01 (2) (intro.), 48.01 (2)
10 (a), 48.01 (2) (b), 48.02 (2), 48.02 (13), 48.02 (15), 48.028, 48.13 (intro.), 48.14
11 (intro.), 48.15, 48.19 (2), 48.195 (2) (d) 7., 48.20 (2) (ag), 48.20 (2) (b), 48.20 (3),
12 48.20 (7) (c) (intro.), 48.20 (7) (c) 1., 48.20 (7) (d), 48.21 (3) (am), 48.21 (3) (b),
13 48.21 (3) (d), 48.21 (3) (e), 48.23 (3), 48.23 (4), 48.235 (4) (a) 7., 48.235 (4m) (a)
14 7., 48.243 (3), 48.255 (1) (cm), 48.255 (1m) (d), 48.255 (2), 48.255 (4), 48.27 (3)
15 (a) 1., 48.27 (3) (d), 48.27 (4) (a) 2., 48.299 (6) (d), 48.30 (1), 48.30 (2), 48.30 (6)

(a), 48.30 (7), 48.305, 48.31 (1), 48.31 (7) (a), 48.315 (1m), 48.315 (2), 48.345 (3) (intro.), 48.355 (2) (d), 48.355 (2c) (title), 48.357 (1) (am) 2., 48.357 (1) (am) 3., 48.357 (1) (c) 3., 48.357 (2m) (a), 48.357 (2m) (b), 48.357 (2m) (c), 48.363 (1) (a), 48.363 (1) (b), 48.365 (1m), 48.365 (2), 48.365 (2m) (a) 1., 48.365 (2m) (a) 3., 48.365 (2m) (ag), 48.38 (5) (b), 48.38 (5) (d), 48.38 (5) (e), 48.38 (5m) (b), 48.38 (5m) (d), 48.38 (5m) (e), 48.415 (2) (a) 2. a., 48.415 (2) (a) 2. b., 48.42 (1) (d), 48.42 (2) (c), 48.42 (4) (a), 48.422 (1), 48.422 (2), 48.422 (6) (a), 48.423 (1), 48.424 (1), 48.424 (2) (intro.), 48.424 (2) (a), 48.424 (3), 48.424 (4) (intro.), 48.424 (4) (a), 48.424 (5), 48.428 (2) (a), 48.428 (2) (b), 48.43 (5) (c), 48.43 (5m), 48.43 (6) (a), 48.43 (6) (c), 48.46 (2), 48.48 (8m), 48.485, 48.63 (1), 48.63 (4), 48.63 (5) (b), 48.63 (5) (c), 48.63 (5) (d) 3., 48.63 (5) (d) 4., 48.63 (5) (d) 5., 48.63 (5) (d) 6., 48.83 (1), 48.833, 48.837 (4) (c), 48.837 (4) (d), 48.837 (6) (c), 48.85 (1), 48.88 (2) (b), 48.89 (1), 48.91 (3), 48.93 (1d), 48.977 (4) (a) 1., 48.977 (4) (b) 6., 48.977 (4) (c) 2., 48.977 (4) (d), 48.978 (2) (b) 11., 48.981 (1) (i), 48.981 (3) (bm) (intro.), 48.981 (3) (bm) 1., 48.981 (3) (bm) 2., 48.981 (7) (a) 10m., 48.981 (7) (a) 10r., 48.981 (7) (a) 11m., 822.015, 938.02 (10m), 938.02 (12m), 938.02 (13), 938.02 (15), 938.028, 938.13 (intro.), 938.15, 938.185 (4) (title), 938.185 (4) (intro.), 938.185 (4) (a), 938.185 (4) (b), 938.19 (2), 938.20 (2) (ag), 938.20 (2) (b), 938.20 (3), 938.20 (7) (c) 1., 938.20 (7) (d), 938.20 (8) (a), 938.21 (2) (title), 938.21 (2) (ag), 938.21 (3) (ag), 938.21 (3) (am), 938.21 (3) (b), 938.21 (3) (d), 938.21 (3) (e), 938.23 (3), 938.23 (4), 938.235 (4) (a) 7., 938.24 (2r) (a) (intro.), 938.24 (2r) (a) 1., 938.24 (2r) (a) 2., 938.24 (2r) (b), 938.243 (1) (e), 938.243 (3), 938.255 (1) (cm), 938.255 (1) (cr) 1. a., 938.255 (1) (cr) 1. b., 938.255 (1) (cr) 1. c., 938.255 (1) (cr) 2., 938.255 (2), 938.255 (4), 938.27 (3) (a) 1., 938.27 (4) (b), 938.273 (1) (a), 938.273 (1) (b), 938.299 (6) (d), 938.299 (9) (a), 938.30 (1), 938.30 (2), 938.30 (6) (a), 938.30 (7),

1 938.305, 938.31 (7) (a), 938.315 (2), 938.355 (2) (d), 938.355 (2c) (title), 938.355
2 (6) (an) 1., 938.355 (6) (b), 938.355 (6m) (am) 1., 938.355 (6m) (c), 938.357 (1)
3 (am) 2., 938.357 (1) (am) 3., 938.357 (1) (c) 3., 938.357 (2m) (a), 938.357 (2m) (b),
4 938.357 (2m) (c), 938.363 (1) (a), 938.363 (1) (b), 938.365 (1m), 938.365 (2),
5 938.365 (2m) (a) 1., 938.365 (2m) (a) 3., 938.365 (2m) (ag), 938.38 (3) (intro.),
6 938.38 (5) (b), 938.38 (5) (d), 938.38 (5) (e), 938.38 (5m) (b), 938.38 (5m) (d) and
7 938.38 (5m) (e); **to repeal and recreate** 938.02 (15c); and **to create** 48.02 (5k),
8 48.02 (8d), 48.02 (8g), 48.02 (8j), 48.02 (8m), 48.02 (8p), 48.02 (8r), 48.02 (15c),
9 48.02 (18j), 48.14 (12), 48.155, 48.23 (2) (b), 48.23 (2g), 48.255 (1) (g), 48.255
10 (1m) (g), 48.273 (1) (ag), 48.273 (1) (c) 2., 48.299 (9), 48.315 (1) (j), 48.33 (4) (d),
11 48.335 (3j), 48.345 (3m), 48.355 (2) (b) 6v., 48.355 (2c) (c), 48.357 (1) (am) 1g.,
12 48.357 (1) (am) 1m., 48.357 (1) (c) 1m., 48.357 (1) (c) 2m., 48.357 (2m) (am),
13 48.357 (2m) (bm), 48.357 (2v) (a) 4., 48.365 (2g) (b) 4., 48.38 (4) (i), 48.38 (4m),
14 48.38 (5) (bm), 48.38 (5) (c) 8., 48.38 (5m) (bm), 48.38 (6) (cm), 48.41 (2) (e),
15 48.417 (2) (cm), 48.42 (1) (e), 48.42 (2g) (ag), 48.425 (1) (cm), 48.427 (5), 48.43
16 (5) (bm), 48.47, 48.831 (1r), 48.831 (4) (cm), 48.834, 48.837 (2) (e), 48.93 (1v),
17 48.977 (2) (g), 48.977 (4) (b) 7., 48.977 (4) (c) 1. j., 48.977 (4) (c) 2m., 48.977 (4)
18 (g) 4., 938.01 (3), 938.02 (5k), 938.02 (8d), 938.02 (8g), 938.02 (8j), 938.02 (8m),
19 938.02 (8p), 938.02 (8r), 938.02 (18j), 938.155, 938.23 (2), 938.23 (2g), 938.255
20 (1) (g), 938.27 (3) (d), 938.273 (1) (ag), 938.273 (1) (c) 2., 938.299 (10), 938.315
21 (1) (a) 11., 938.33 (4) (d), 938.335 (3j), 938.345 (1m), 938.355 (2) (b) 6v., 938.355
22 (2c) (c), 938.355 (6) (bm), 938.355 (6) (cr), 938.355 (6m) (bm), 938.355 (6m) (cr),
23 938.357 (1) (am) 1g., 938.357 (1) (am) 1m., 938.357 (1) (c) 1m., 938.357 (1) (c)
24 2m., 938.357 (2m) (am), 938.357 (2m) (bm), 938.357 (2v) (a) 4., 938.365 (2g) (b)

- 1 4., 938.38 (4) (i), 938.38 (4m), 938.38 (5) (bm), 938.38 (5) (c) 8., 938.38 (5m) (bm),
2 938.38 (6) (cm) and 938.47 of the statutes; **relating to:** Indian child welfare.
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Analysis by the Legislative Reference Bureau

Introduction

Under current law, the federal Indian Child Welfare Act (ICWA), which governs jurisdiction over child custody proceedings involving an Indian child and provides certain minimum standards for those proceedings, supercedes the provisions of the Children's Code and the Juvenile Justice Code in any child custody proceeding governed by ICWA. For purposes of ICWA, "child custody proceeding" means any of the following:

1. Any action removing an Indian child from his or her parent or Indian custodian, that is, an Indian person who has legal custody of an Indian child under tribal law or custom or state law or to whom temporary physical custody of an Indian child has been transferred by the Indian child's parent, for temporary placement in a foster home or institution, in which the parent or Indian custodian cannot have the Indian child removed on demand, but not including a placement that is based on an act that would be a crime if committed by an adult (out-of-home care placement).
2. A termination of parental rights (TPR) proceeding.
3. A temporary placement of an Indian child in a foster home or institution after a TPR, but prior to or in lieu of an adoptive placement (preadoptive placement).
4. An adoptive placement.

This bill incorporates the jurisdictional provisions of ICWA and the minimum standards for Indian child custody proceedings established by ICWA into the provisions of the Children's Code relating to child in need of protection or services (CHIPS), TPR, and adoption proceedings and the provisions of the Juvenile Justice Code relating to juvenile in need of protection or services (JIPS) proceedings, other than proceedings that are based on the commission of an act that would be a crime if committed by an adult.

Jurisdiction

Under ICWA, an Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe and over an Indian child who is a ward of a tribal court, regardless of the residence or domicile of the Indian child, except when jurisdiction is otherwise vested in the state by federal law. This grant of jurisdiction, however, does not prevent the emergency removal of an Indian child who resides or is domiciled on a reservation, but who is temporarily located off the reservation, from his or her parent or Indian custodian in order to prevent imminent physical damage or harm to the Indian child.

Also, under ICWA, a state court is required to transfer a proceeding involving an out-of-home care placement of, or TPR to, an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe to the jurisdiction of the Indian child's tribe upon the petition of the Indian child's parent, Indian custodian,

or tribe, unless a parent of the Indian child objects, the tribal court declines jurisdiction, or the state court finds good cause not to transfer the proceeding. In addition, ICWA permits an Indian child's parent, Indian custodian, or tribe to intervene at any point in an Indian child custody proceeding in state court involving the out-of-home care placement of, or TPR to, the Indian child.

Finally, with respect to jurisdiction over an Indian child custody proceeding, ICWA requires a state court to decline jurisdiction and to forthwith return an Indian child to his or her parent or Indian custodian, unless returning the Indian child would subject the Indian child to a substantial and immediate danger or threat of danger, when a petitioner in an Indian child custody proceeding has improperly removed the Indian child from the custody of his or her parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody.

This bill incorporates those jurisdictional provisions of ICWA into the Children's Code and the Juvenile Justice Code.

Involuntary out-of-home care placements and TPR proceedings

ICWA requires a party seeking an out-of-home care placement of, or TPR to, an Indian child in an involuntary proceeding in state court to notify the Indian child's parent, Indian custodian, and tribe, by registered mail with return receipt requested, of the proceeding and of their right to intervene in the proceeding. Under ICWA, if the identity or location of the parent, Indian custodian, or tribe cannot be determined, notice of the proceeding must be provided to the U.S. secretary of the interior, who then has 15 days after receipt of the notice to provide the notice to the parent, Indian custodian, and tribe. ICWA prohibits an out-of-home care placement or TPR proceeding from being heard until at least ten days after receipt of notice by the parent, Indian custodian, or tribe or by the U.S. secretary of the interior and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the proceeding.

This bill requires an Indian child's parent, Indian custodian, and tribe to be notified, in the manner specified in ICWA, of a CHIPS, JIPS, or TPR proceeding involving the Indian child, of a change in placement in a CHIPS or JIPS proceeding involving the Indian child, or of a hearing to determine or review the permanency plan for the Indian child. A permanency plan is a plan designed to ensure that a child is reunified with his or her family whenever appropriate or that the child quickly attains a placement providing long-term stability. The bill prohibits a CHIPS, JIPS, or TPR hearing, a change in placement hearing, or a permanency plan determination or review hearing from being held until at least ten days after receipt of notice of the hearing by the parent, Indian custodian, or tribe and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the hearing.

Under ICWA, a parent or Indian custodian who is indigent has the right to court-appointed counsel in any proceeding involving the removal of an Indian child from his or her home, placement of an Indian child in an out-of-home care placement, or TPR to an Indian child. This bill incorporates that right into the Children's Code and the Juvenile Justice Code.

ICWA requires a party seeking to effect an out-of-home care placement of, or a TPR to, an Indian child to satisfy the state court that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. ICWA also prohibits a state court from ordering an out-of-home care placement of, or TPR to, an Indian child in the absence of a determination, supported by clear and convincing evidence in the case of out-of-homecare placement and by evidence beyond a reasonable doubt in the case of TPR, including the testimony qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

This bill requires a CHIPS or JIPS order or a change in placement order placing an Indian child outside the home to include a finding, supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and a finding, supported by clear and convincing evidence that the agency primarily responsible for providing services to the Indian child has made active efforts to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. The bill also requires the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) or jury in a TPR proceeding to determine if it is proved beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and if it is proved beyond a reasonable doubt that active efforts have been made to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. In addition, the bill requires an order extending a CHIPS or JIPS dispositional order for an Indian child who is placed outside the home and a summary of a permanency plan review for such a child to include a determination as to whether active efforts were made to prevent the breakup of the Indian family and as to whether those efforts have proved unsuccessful.

ICWA further requires an Indian child who is accepted for an out-of-home care placement or a preadoptive placement to be placed in the least restrictive setting which most approximates a family and in which the Indian child's special needs, if any, may be met and requires an Indian child to be placed within reasonable proximity to his or her home, taking into account any special needs of the Indian child. ICWA also requires that a preference be given, in the absence of good cause to the contrary, to a placement with a member of the Indian child's extended family, a foster home licensed, approved, or specified by the Indian child's tribe, an Indian foster home licensed or approved by an authorized non-Indian licensing authority, or an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs, unless the Indian child's tribe has established a different order of preference. ICWA also specifies that the standards to be applied in meeting the placement preference

requirements of ICWA are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parent or extended family maintains social and cultural ties.

This bill requires the juvenile court, in placing or changing the placement of an Indian child who is in need of protection or services or in placing an Indian child in a preadoptive placement following a TPR, to designate one of the following as the placement for the Indian child, in the order of preference listed, unless the Indian child's tribe has established a different order of preference or good cause is shown for departing from that order of preference:

1. The home of an extended family member of the Indian child.
2. A foster home or treatment foster home licensed, approved, or specified by the Indian child's tribe.
3. An Indian foster home or treatment foster home licensed or approved by the Department of Health and Family Services (DHFS), a county department of human services or social services (county department), or a child welfare agency.
4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.

The bill requires the juvenile court to designate a placement that is the least restrictive setting that most approximates a family, that meets the Indian child's special needs, if any, and that is within reasonable proximity to the Indian child's home, taking into account the Indian child's special needs. The bill also specifies that the standards to be applied in meeting the placement preference requirements of the bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties.

Finally, with respect to involuntary out-of-home care placements and TPR proceedings, ICWA permits the Indian child or the Indian child's parent, Indian custodian, or tribe to petition any court of competent jurisdiction to invalidate an out-of-home care placement or TPR upon a showing that the placement or TPR violated any provision of ICWA relating to out-of-home care placements or TPR.

This bill permits any Indian child who is the subject of an out-of-home care placement or of a TPR proceeding, any parent or Indian custodian of that Indian child, or the Indian child's tribe to move the juvenile court to invalidate that out-of-home care placement or TPR on the grounds that the out-of-home care placement was made or the TPR was ordered in violation of any provision of ICWA relating to out-of-home care placements or TPR. If the juvenile court finds that those grounds exist and if the Indian child has not been adopted, the juvenile court must invalidate the out-of-home care placement or TPR and order the Indian child to be returned to his or her parent or Indian custodian. If the Indian child has been adopted, the parent or Indian custodian may petition the juvenile court for return of custody of the Indian child.

Voluntary TPR

Under ICWA, the consent of a parent to a TPR to an Indian child is not valid unless executed in writing, recorded before a judge of a court of competent

jurisdiction, and accompanied by the judge's certification that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent. ICWA also requires the court to certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Under ICWA, any consent given prior to, or within ten days after, the birth of an Indian child, is not valid. ICWA permits a parent to withdraw his or her consent to a TPR for any reason prior to the entry of a final decree of TPR, and the Indian child must be returned to the parent. After the entry of a final decree of adoption of an Indian child, the Indian child's parent may withdraw consent to the TPR to the Indian child on the grounds of fraud or duress and may petition the court to vacate the decree. If the court finds that the consent was obtained through fraud or duress, the court must vacate the decree and return the Indian child to his or her parent, except that no adoption that has been effective for at least two years may be invalidated by the withdrawal of consent on the grounds of fraud or duress.

This bill permits a judge of the juvenile court to accept a voluntary consent to TPR to an Indian child only if the consent is executed in writing, recorded before the judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The bill also requires the judge to certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Under the bill, any consent to TPR given prior to or within ten days after the birth of an Indian child is not valid.

The bill permits a parent who has consented to TPR to an Indian child to withdraw the consent for any reason at any time prior to the entry of a final order of TPR, and the Indian child must be returned to his or her parent. After the entry of a final TPR order, a parent who has consented to TPR to an Indian child or who did not contest a petition initiating involuntary TPR proceedings may withdraw that consent and move the juvenile court for relief from the order on the grounds that the consent was obtained through fraud, misrepresentation, or duress, if the motion is filed within two years after the entry of an order granting adoption of the Indian child. If the juvenile court finds that the consent was obtained through fraud, misrepresentation, or duress, the juvenile court must vacate the TPR order and, if applicable, the order granting adoption.

Adoption

ICWA requires, when an Indian child is placed for adoption, that a preference be given, in the absence of good cause to the contrary, to a placement with a member of the Indian child's extended family, other members of the Indian child's tribe, or other Indian families, unless the Indian child's tribe has established a different order of preference. ICWA also specifies that the standards to be applied in meeting the placement preference requirements of ICWA are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parent or extended family maintains social and cultural ties.

This bill requires DHFS, a county department, or a child welfare agency, in placing an Indian child for adoption or in investigating or making a recommendation regarding the adoptive placement of an Indian child, and a juvenile court, in determining whether an adoptive placement is in the best interests of an Indian child, to give preference to a placement with one of the following, in the order of preference listed, unless the Indian child's tribe has established a different order of preference or good cause is shown for departing from that order of preference:

1. An extended family member of the Indian child.
2. Another member of the Indian child's tribe.
3. Another Indian family.

The bill also specifies that the standards to be applied in meeting the placement preference requirements of the bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties.

ICWA permits a biological parent or former Indian custodian of an Indian child who has been adopted to petition for return of custody of the Indian child when a final decree of adoption of the Indian child has been vacated or set aside or when the adoptive parents of the Indian child voluntarily consent to TPR to the Indian child. Under ICWA, the state court must grant the petition unless there is a showing that return of custody is not in the best interests of the Indian child.

This bill requires a juvenile court that vacates or sets aside a final order granting adoption of an Indian child or that grants an order voluntarily terminating parental rights to an Indian child of all adoptive parents of the Indian child to notify the Indian child's former parent and former Indian custodian, and the former parent or former Indian custodian may petition for the return of custody of the Indian child. The juvenile court must grant the petition unless there is a showing of good cause that return of custody is not in the best interest of the Indian child.

Finally, ICWA requires a state court that enters a final decree of adoption of an Indian child to: 1) provide the U.S. secretary of the interior with a copy of the decree, together with such other information as may be necessary to show the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's biological parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency having files or information relating to the adoptive placement of the Indian child; and 2) inform an Indian individual who has reached the age of 18 years and who was the subject of an adoptive placement, upon application, of the tribal affiliation, if any, of the individual's biological parents and with such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

This bill requires a juvenile court that enters an order granting adoption of an Indian child to: 1) provide the U.S. secretary of the interior with a copy of the order, together with such other records and papers pertaining to the adoption proceeding as may be necessary to provide that secretary with the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's birth parents, the names and addresses of the Indian child's adoptive parents, and the identity of any

agency that has in its possession any files or information relating to the adoptive placement of the Indian child; and 2) provide an Indian adoptee who is 18 years of age or older, upon request, with the tribal affiliation, if any, of the adoptee's birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.515 (1) (d) of the statutes is amended to read:

2 46.515 (1) (d) "Indian child" has the meaning given in s. ~~48.981 (1) (cs)~~ 48.02
3 (8g).

4 **SECTION 2.** 48.01 (2) (intro.) of the statutes is amended to read:

5 48.01 (2) (intro.) In Indian child custody proceedings ~~involving an American~~
6 ~~Indian child~~, the best interests of the Indian child shall be determined consistent
7 with the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC 1901 to
8 1963. ~~In this subsection, "American Indian child" means any unmarried person who~~
9 ~~is under 18 years of age and who is one~~ It is the policy of this state to do all of the
10 following:

11 **SECTION 3.** 48.01 (2) (a) of the statutes is amended to read:

12 48.01 (2) (a) ~~A member of an~~ Cooperate fully with Indian tribe, ~~as defined in~~
13 ~~25 USC 1903 (8)~~ tribes in order to ensure that the federal Indian Child Welfare Act
14 is enforced in this state.

15 **SECTION 4.** 48.01 (2) (b) of the statutes is amended to read:

16 48.01 (2) (b) ~~Eligible for membership in an~~ Protect the best interests of Indian
17 ~~tribe and is the biological child of a member of an~~ children and to promote the
18 stability and security of Indian tribes and families by the establishment of minimum
19 standards for the removal of Indian children from their families and the placement

1 of those children in foster or adoptive homes that will reflect the unique value of
2 Indian tribe culture.

NOTE: The amendment of s. 48.01 (2) includes the declaration of policy found in 25
USC 1902 and 43-1502, Nebraska statutes.

3 **SECTION 5.** 48.02 (2) of the statutes is amended to read:

4 48.02 (2) “Child”, “when used without further qualification, means a person
5 who is less than 18 years of age, except that for purposes of investigating or
6 prosecuting a person who is alleged to have violated a state or federal criminal law
7 or any civil law or municipal ordinance, “child” does not include a person who has
8 attained 17 years of age.

9 **SECTION 6.** 48.02 (5k) of the statutes is created to read:

10 48.02 (5k) “Extended family member,” with respect to an Indian child, means
11 a person who is defined as a member of an Indian child’s extended family by the law
12 or custom of the Indian child’s tribe or, in the absence of such a law or custom, a
13 person who has attained the age of 18 years and who is the Indian child’s
14 grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
15 nephew, first cousin, 2nd cousin, or stepparent.

16 **SECTION 7.** 48.02 (8d) of the statutes is created to read:

17 48.02 (8d) “Indian” means any person who is a member of an Indian tribe or
18 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
19 1606.

20 **SECTION 8.** 48.02 (8g) of the statutes is created to read:

21 48.02 (8g) “Indian child” means an unmarried person who is under 18 years
22 of age and who is one of the following:

23 (a) A member of an Indian tribe.

1 (b) Eligible for membership in an Indian tribe and is the biological child of a
2 member of an Indian tribe.

3 **SECTION 9.** 48.02 (8j) of the statutes is created to read:

4 48.02 (8j) “Indian child custody proceeding” means a proceeding governed by
5 the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the
6 following may occur:

7 (a) An adoptive placement, which means the permanent placement of an
8 Indian child for adoption.

9 (b) An out-of-home care placement, which means the removal of an Indian
10 child from his or her parent or Indian custodian for temporary placement in a foster
11 home, treatment foster home, group home, or residential care center for children and
12 youth or in the home of a guardian, from which placement the parent or Indian
13 custodian cannot have the child returned upon demand.

14 (c) A preadoptive placement, which means the temporary placement of an
15 Indian child in a foster home, treatment foster home, group home, or residential care
16 center for children and youth or in the home of a guardian after a termination of
17 parental rights but prior to or in lieu of an adoptive placement.

18 (d) A termination of parental rights, as defined in s. 48.40 (2), to an Indian child.

19 **SECTION 10.** 48.02 (8m) of the statutes is created to read:

20 48.02 (8m) “Indian child’s tribe” means one of the following:

21 (a) The Indian tribe in which an Indian child is a member or eligible for
22 membership.

23 (b) In the case of an Indian child who is a member of or eligible for membership
24 in more than one tribe, the Indian tribe with which the Indian child has the more
25 significant contacts.

1 **SECTION 11.** 48.02 (8p) of the statutes is created to read:

2 48.02 (8p) “Indian custodian” means an Indian person who has legal custody
3 of an Indian child under tribal law or custom or under state law or to whom
4 temporary physical care, custody, and control has been transferred by the parent of
5 the child.

6 **SECTION 12.** 48.02 (8r) of the statutes is created to read:

7 48.02 (8r) “Indian tribe” means any Indian tribe, band, nation, or other
8 organized group or community of Indians that is recognized as eligible for the
9 services provided to Indians by the U.S. secretary of the interior because of Indian
10 status, including any Alaska native village, as defined in 43 USC 1602 (c).

11 **SECTION 13.** 48.02 (13) of the statutes is amended to read:

12 48.02 (13) “Parent” means either a biological parent, a husband who has
13 consented to the artificial insemination of his wife under s. 891.40, or a parent by
14 adoption, including, in the case of an Indian child, an adoption under tribal law or
15 custom. If the child is a nonmarital child who is not adopted or whose parents do not
16 subsequently intermarry under s. 767.60, “parent” includes a person acknowledged
17 under s. 767.62 (1) or a substantially similar law of another state or adjudicated to
18 be the biological father. “Parent” does not include any person whose parental rights
19 have been terminated.

NOTE: The DHFS draft creates s. 48.40 (1g) to define “Indian parent.” Actually,
ICWA applies to any parent, not just an Indian parent, of an Indian child. See 25 USC
1903 (9). Accordingly, s. 48.40 (1g) is not included in this draft.

20 **SECTION 14.** 48.02 (15) of the statutes, as affected by 2005 Wisconsin Act 232,
21 is amended to read:

22 48.02 (15) “Relative” means a parent, stepparent, brother, sister, stepbrother,
23 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd

1 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
2 generation as denoted by the prefix of grand, great, or great–great, whether by blood,
3 marriage, or legal adoption, or the spouse of any person named in this subsection,
4 even if the marriage is terminated by death or divorce. “Relative” also includes, in
5 the case of an Indian child, an extended family member, whether by blood, marriage,
6 or adoption, including adoption under tribal law or custom.

7 **SECTION 15.** 48.02 (15c) of the statutes is created to read:

8 48.02 (15c) “Reservation” means Indian country, as defined in 18 USC 1151,
9 or any land not covered under that section to which the title is either held by the
10 United States in trust for the benefit of an Indian tribe or individual or held by an
11 Indian tribe or individual, subject to a restriction by the United States against
12 alienation.

13 **SECTION 16.** 48.02 (18j) of the statutes is created to read:

14 48.02 (18j) “Tribal court” means a court that has jurisdiction over Indian child
15 custody proceedings, and that is either a court of Indian offenses or a court
16 established and operated under the code or custom of an Indian tribe, or any other
17 administrative body of an Indian tribe that is vested with authority over Indian child
18 custody proceedings.

19 **SECTION 17.** 48.028 of the statutes is amended to read:

20 **48.028 Custody of Indian children.** ~~The Indian child welfare act~~ federal
21 Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes the provisions of this
22 chapter in any Indian child custody proceeding governed by that act, except that in
23 any case in which this chapter provides a higher standard of protection for the rights
24 of an Indian child’s parent or Indian custodian than the rights provided under that
25 act, the court shall apply the standard under this chapter.

NOTE: In reviewing this SECTION, please note all of the following:

1. The SECTION incorporates the higher standard language of 25 USC 1921. See also ss. 822.015 and 938.028, stats., as affected by this draft.

2. The DHFS draft incorporates the jurisdictional provisions of ICWA here. This draft incorporates those provisions in subch. III of ch. 48, which is where the jurisdictional provisions of that chapter are found.

1 **SECTION 18.** 48.13 (intro.) of the statutes is amended to read:

2 **48.13 Jurisdiction over children alleged to be in need of protection or**
3 **services.** (intro.) The Except as provided in s. 48.155, the court has exclusive
4 original jurisdiction over a child alleged to be in need of protection or services which
5 can be ordered by the court, and:

6 **SECTION 19.** 48.14 (intro.) of the statutes is amended to read:

7 **48.14 Jurisdiction over other matters relating to children.** (intro.) ~~The~~
8 Except as provided in s. 48.155, the court has exclusive jurisdiction over:

9 **SECTION 20.** 48.14 (12) of the statutes is created to read:

10 **48.14 (12)** Proceedings under s. 48.47 (3) for the return of custody of an Indian
11 child to his or her former parent or former Indian custodian following a vacation or
12 setting aside of an order granting adoption of the Indian child or following an order
13 voluntarily terminating parental rights to an Indian child of all adoptive parents of
14 the Indian child.

15 **SECTION 21.** 48.15 of the statutes is amended to read:

16 **48.15 Jurisdiction of other courts to determine legal custody.** ~~Nothing~~
17 ~~contained in ss. 48.13, 48.133 and 48.14~~ Except as provided in s. 48.155, nothing in
18 this chapter ~~deprives other courts~~ another court of the right to determine the legal
19 custody of ~~children~~ a child by habeas corpus or to determine the legal custody or
20 guardianship of ~~children~~ a child if the legal custody or guardianship is incidental to
21 the determination of ~~causes~~ an action pending in ~~the other courts.~~ But that court.

1 Except as provided in s. 48.155, the jurisdiction of the court assigned to exercise
2 jurisdiction under this chapter and ch. 938 is paramount in all cases involving
3 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn
4 children and their expectant mothers alleged to come within the provisions of ss.
5 48.133 and 48.14 (5).

6 **SECTION 22.** 48.155 of the statutes is created to read:

7 **48.155 Jurisdiction over Indian children. (1) EXCLUSIVE JURISDICTION.** (a)

8 An Indian tribe shall have exclusive jurisdiction over any Indian child custody
9 proceeding involving an Indian child who resides or is domiciled within the
10 reservation of the tribe, except when that jurisdiction is otherwise vested in the state
11 by federal law and except as provided in par. (b). If an Indian child is a ward of a tribal
12 court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence
13 or domicile of the child.

14 (b) Paragraph (a) does not prevent an Indian child who resides or is domiciled
15 within a reservation, but who is temporarily located off the reservation, from being
16 taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent
17 physical harm or damage to the Indian child. The person taking the Indian child into
18 custody or the intake worker shall immediately release the Indian child from custody
19 upon determining that continuing the Indian child in custody is no longer necessary
20 to prevent imminent physical damage or harm to the Indian child.

21 **(2) TRANSFER OF PROCEEDINGS TO TRIBE.** In any Indian child custody proceeding
22 under this chapter involving an out-of-home placement of, or termination of
23 parental rights to, an Indian child who is not residing or domiciled within the
24 reservation of the Indian child's tribe, the court assigned to exercise jurisdiction
25 under this chapter shall, upon the petition of the Indian child's parent, Indian

1 custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any
2 of the following applies:

3 (a) A parent of the Indian child objects to the transfer.

4 (b) The tribal court of the Indian child's tribe declines jurisdiction.

5 (c) The court determines that good cause exists to deny the transfer.

6 **(3) DECLINATION OF JURISDICTION.** If the court determines that the petitioner in
7 an Indian child custody proceeding has improperly removed the Indian child from
8 the custody of his or her parent or Indian custodian or has improperly retained
9 custody of the Indian child after a visit or other temporary relinquishment of custody,
10 the court shall decline jurisdiction over the petition and immediately return the
11 Indian child to the custody of the parent or Indian custodian, unless the court
12 determines that returning the Indian child to his or her parent or Indian custodian
13 would subject the Indian child to substantial and immediate danger or the threat of
14 that danger.

15 **(4) INTERVENTION.** AN Indian child's Indian custodian or tribe may intervene
16 at any point in an Indian child custody proceeding under this chapter involving an
17 out-of-home care placement of, or termination of parental rights to, the Indian child.

18 **(5) FULL FAITH AND CREDIT.** The court shall give full faith and credit to the public
19 acts, records, and judicial proceedings of any Indian tribe that are applicable to an
20 Indian child custody proceeding to the same extent that the state gives full faith and
21 credit to the public acts, records, and judicial proceedings of any other governmental
22 entity.

NOTE: In reviewing this SECTION, please note all of the following:

1. Because 25 USC 1922 governs emergency removal of a child domiciled on a reservation, this draft incorporates that provision into s. 48.155 (1), which relates to jurisdiction over such a child.

2. 25 USC 1911 (b) and (c), relating to transfer of proceedings and intervention, only apply to out-of-home care placements and termination of parental rights (TPR) proceedings, not to adoptive placements. Accordingly, the reference in the DHFS draft to any Indian child custody proceeding is too broad.

3. Also, with respect to transfer of jurisdiction, the language of the U.S. Department of Interior Guidelines is clearer than 25 USC 1911 (b), so this draft uses the Guidelines language.

4. 25 USC 1920 relates to declination of jurisdiction. Therefore that section is incorporated into the section on jurisdiction.

5. Do we need s. 48.155 (5) relating to full faith and credit? Full faith and credit is already covered in s. 806.245, stats.

SECTION 23. 48.19 (2) of the statutes is amended to read:

48.19 (2) When a child is taken into physical custody as ~~provided in~~ under this section, the person taking the child into custody shall immediately attempt to notify the parent, guardian ~~and~~, legal custodian, and Indian custodian of the child by the most practical means. The person taking the child into custody shall continue such attempt until the parent, guardian ~~and~~, legal custodian, and Indian custodian of the child are notified, or the child is delivered to an intake worker under s. 48.20 (3), whichever occurs first. If the child is delivered to the intake worker before the parent, guardian ~~and~~, legal custodian, and Indian custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian ~~and~~, legal custodian, and Indian custodian of the child are notified.

SECTION 24. 48.195 (2) (d) 7. of the statutes is amended to read:

48.195 (2) (d) 7. A tribal court, or other adjudicative body authorized by an American Indian tribe ~~or band~~ to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the ~~American Indian tribe or band~~ in those proceedings, or an attorney representing the interests of the child in those proceedings.

SECTION 25. 48.20 (2) (ag) of the statutes is amended to read:

1 48.20 (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into
2 custody shall make every effort to release the child immediately to the child's parent,
3 guardian ~~or~~, legal custodian, or Indian custodian.

4 **SECTION 26.** 48.20 (2) (b) of the statutes is amended to read:

5 48.20 (2) (b) If the child's parent, guardian ~~or~~, legal custodian, or Indian
6 custodian is unavailable, unwilling, or unable to provide supervision for the child,
7 the person who took the child into custody may release the child to a responsible
8 adult after counseling or warning the child as may be appropriate.

9 **SECTION 27.** 48.20 (3) of the statutes is amended to read:

10 48.20 (3) If the child is released under sub. (2) (b) to (d), the person who took
11 the child into custody shall immediately notify the child's parent, guardian ~~and~~, legal
12 custodian, and Indian custodian of the time and circumstances of the release and the
13 person, if any, to whom the child was released. If the child is not released under sub.
14 (2), the person who took the child into custody shall arrange in a manner determined
15 by the court and law enforcement agencies for the child to be interviewed by the
16 intake worker under s. 48.067 (2), ~~and. The person who took the child into custody~~
17 ~~shall make a statement in writing with supporting facts of the reasons why the child~~
18 ~~was taken into physical custody and shall give any child 12 years of age or older a~~
19 ~~copy of the statement in addition to giving a copy to the intake worker. When and~~
20 to any child 12 years of age or older. If the intake interview is not done in person, the
21 report may be read to the intake worker.

22 **SECTION 28.** 48.20 (7) (c) (intro.) of the statutes is amended to read:

23 48.20 (7) (c) (intro.) The intake worker may release the child as follows:

24 **SECTION 29.** 48.20 (7) (c) 1. of the statutes is amended to read:

1 48.20 (7) (c) 1. To a parent, guardian ~~or~~, legal custodian, or Indian custodian,
2 or, to a responsible adult if the parent, guardian ~~or~~, legal custodian, or Indian
3 custodian is unavailable, unwilling, or unable to provide supervision for the child,
4 ~~release the child to a responsible adult~~, counseling or warning the child as may be
5 appropriate; or, if a the child is 15 years of age or older, ~~release the child~~ without
6 immediate adult supervision, counseling or warning the child as may be appropriate;
7 ~~or~~.

8 **SECTION 30.** 48.20 (7) (d) of the statutes is amended to read:

9 48.20 (7) (d) If the child is released from custody, the intake worker shall
10 immediately notify the child's parent, guardian ~~and~~, legal custodian, and Indian
11 custodian of the time and circumstances of the release and the person, if any, to whom
12 the child was released.

13 **SECTION 31.** 48.20 (8) of the statutes is renumbered 48.20 (8) (a) and amended
14 to read:

15 48.20 (8) (a) If a child is held in custody, the intake worker shall notify the
16 child's parent, guardian ~~and~~, legal custodian, and Indian custodian of the reasons for
17 holding the child in custody and of the child's whereabouts unless there is reason to
18 believe that notice would present imminent danger to the child. The parent,
19 guardian ~~and~~, legal custodian, and Indian custodian shall also be notified of the time
20 and place of the detention hearing required under s. 48.21, the nature and possible
21 consequences of that hearing, the right to counsel under s. 48.23 regardless of ability
22 to pay, and the right to present and cross-examine witnesses at the hearing. If the
23 parent, guardian ~~or~~, legal custodian, or Indian custodian is not immediately
24 available, the intake worker or another person designated by the court shall provide
25 notice as soon as possible. When the child is 12 years of age or older, the child shall

1 receive the same notice about the detention hearing as the parent, guardian or, legal
2 custodian, or Indian custodian. The intake worker shall notify both the child and the
3 child's parent, guardian or, legal custodian. ~~When , or Indian custodian.~~

4 (b) If the child is an expectant mother who has been taken into custody under
5 s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child's guardian ad
6 litem, shall receive the same notice about the whereabouts of the child expectant
7 mother, about the reasons for holding the child expectant mother in custody and
8 about the detention hearing as the child expectant mother and her parent, guardian
9 or, legal custodian, or Indian custodian. The intake worker shall notify the child
10 expectant mother, her parent, guardian or, legal custodian, or Indian custodian and
11 the unborn child, by the unborn child's guardian ad litem.

NOTE: In *Joni B. v. State*, 202 Wis. 2d 1 (1996), the Supreme Court held that the legislature's prohibition against appointing counsel for any party other than the child in a child in need of protection or services (CHIPS) proceeding is unconstitutional. Accordingly, this draft amends s. 48.23 (3) and other related provisions to conform the Children's Code to *Joni B.*

12 **SECTION 32.** 48.21 (3) (am) of the statutes is amended to read:

13 48.21 (3) (am) The parent, guardian, or, legal custodian, or Indian custodian
14 may waive his or her right to participate in the hearing under this section. After any
15 waiver, a rehearing shall be granted at the request of the parent, guardian, legal
16 custodian, Indian custodian, or any other interested party for good cause shown.

17 **SECTION 33.** 48.21 (3) (b) of the statutes is amended to read:

18 48.21 (3) (b) If present at the hearing, a copy of the petition or request shall be
19 given to the parent, guardian or, legal custodian, or Indian custodian, and to the child
20 if he or she is 12 years of age or older, before the hearing begins. If the child is an
21 expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8.,
22 a copy of the petition shall also be given to the unborn child, through the unborn

1 child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall
2 be given to the child's parent, guardian ~~and~~, legal custodian, and Indian custodian,
3 to the child if he or she is 12 years of age or older and, if the child is an expectant
4 mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn
5 child, through the unborn child's guardian ad litem, ~~in accordance with~~ under s.
6 48.20 (8).

7 **SECTION 34.** 48.21 (3) (d) of the statutes is amended to read:

8 48.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
9 the parent, guardian ~~or~~, legal custodian ~~shall be informed by the court, or Indian~~
10 custodian of the allegations that have been made or may be made, the nature and
11 possible consequences of this hearing as compared to possible future hearings, the
12 right to counsel under s. 48.23 regardless of ability to pay, the right to confront and
13 cross-examine witnesses, and the right to present witnesses.

14 **SECTION 35.** 48.21 (3) (e) of the statutes is amended to read:

15 48.21 (3) (e) If the parent, guardian ~~or~~, legal custodian, Indian custodian, ~~or the~~
16 child is not represented by counsel at the hearing and the child is continued in
17 custody as a result of the hearing, the parent, guardian, legal custodian, Indian
18 custodian, or child may request through counsel subsequently appointed or retained
19 or through a guardian ad litem that the order to hold the child in custody be reheard.
20 If the request is made, a rehearing shall take place as soon as possible. ~~Any~~ An order
21 to hold the child in custody shall be ~~subject to rehearing~~ reheard for good cause,
22 whether or not counsel was present.

23 **SECTION 36.** 48.21 (5) (d) 1. of the statutes is renumbered 48.21 (5) (d) and
24 amended to read:

1 48.21 (5) (d) If the judge or circuit court commissioner finds that any of the
2 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
3 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m)
4 within 30 days after the date of that finding to determine the permanency plan for
5 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
6 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
7 ~~than 5 days before the date of the hearing.~~

NOTE: Rather than add even more repetitious language to chs. 48 and 938 relating to permanency plan hearings when the court finds aggravated circumstances, this draft consolidates the language of ss. 48.21 (5) (d), 48.32 (1) (c), 48.355 (2d) (c), 48.357 (2v) (c), and 48.365 (2m) (ad) into a newly-created provision, s. 48.38 (4m).

8 **SECTION 37.** 48.21 (5) (d) 2. of the statutes is repealed.

9 **SECTION 38.** 48.21 (5) (d) 3. of the statutes is repealed.

10 **SECTION 39.** 48.23 (2) of the statutes is renumbered 48.23 (2) (a) and amended
11 to read:

12 48.23 (2) (a) Whenever a child is alleged to be in need of protection or services
13 under s. 48.13 or is the subject of a proceeding involving a contested adoption or the
14 involuntary termination of parental rights, any parent under 18 years of age who
15 appears before the court shall be represented by counsel; but no such parent may
16 waive counsel. ~~A~~ Except as provided in sub. (2g), a minor parent petitioning for the
17 voluntary termination of parental rights shall be represented by a guardian ad litem.
18 If a proceeding involves a contested adoption or the involuntary termination of
19 parental rights, any parent 18 years old or older who appears before the court shall
20 be represented by counsel; but the parent may waive counsel provided the court is
21 satisfied such waiver is knowingly and voluntarily made.

22 **SECTION 40.** 48.23 (2) (b) of the statutes is created to read:

1 48.23 (2) (b) If a petition under s. 48.13 is contested, no child may be placed
2 outside his or her home unless the nonpetitioning parent is represented by counsel
3 at the fact-finding hearing and subsequent proceedings. If the petition is not
4 contested, the child may not be placed outside his or her home unless the
5 nonpetitioning parent is represented by counsel at the hearing at which the
6 placement is made. The parent may waive counsel if the court is satisfied that the
7 waiver is knowingly and voluntarily made and the court may place the child outside
8 the home even though the parent was not represented by counsel.

NOTE: The renumbering and amendment of s. 48.23 (2) and the creation of s. 48.23
(2) (b) restores the law that existed prior to the action of the legislature that was ruled
unconstitutional in *Joni B.*

9 **SECTION 41.** 48.23 (2g) of the statutes is created to read:

10 **48.23 (2g) RIGHT OF INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.**
11 Whenever an Indian child is the subject of a proceeding involving the removal of the
12 Indian child from his or her home, placement of the Indian child in an out-of-home
13 care placement, termination of parental rights to the Indian child, or return of
14 custody of the Indian child under s. 48.47 (3), the Indian child's parent or Indian
15 custodian, upon a determination of indigency as provided in sub. (4), shall have the
16 right to be represented by court-appointed counsel. If the court appoints counsel
17 under this subsection for a person who is not otherwise entitled to representation
18 under sub. (2), the court shall promptly notify the U.S. secretary of the interior of the
19 appointment and certify to the secretary the reasonable fees and expenses of the
20 court-appointed counsel for purposes of payment of those fees and expenses under
21 25 USC 1912 (b).

22 **SECTION 42.** 48.23 (3) of the statutes is amended to read:

1 48.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. ~~Except in proceedings under~~
2 ~~s. 48.13, at~~ At any time, upon request or on its own motion, the court may appoint
3 counsel for the child or any party, unless the child or the party has or wishes to retain
4 counsel of his or her own choosing. ~~The court may not appoint counsel for any party~~
5 ~~other than the child in a proceeding under s. 48.13.~~

NOTE: Current law, as affected by *Joni B.*, already permits the court to appoint
counsel for the child in any proceeding under the Children's Code. Accordingly, no special
provision needs to be made for an Indian child.

6 **SECTION 43.** 48.23 (4) of the statutes is amended to read:

7 48.23 (4) PROVIDING COUNSEL. ~~In any situation under this section in which~~ If
8 a child has a right to be represented by counsel or is provided counsel at the discretion
9 of the court under this section and counsel is not knowingly and voluntarily waived,
10 the court shall refer the child to the state public defender and counsel shall be
11 appointed by the state public defender under s. 977.08 without a determination of
12 indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the
13 state public defender shall appoint counsel within 24 hours after that referral. Any
14 counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent
15 the child in any appeal brought under s. 809.105 unless the child requests
16 substitution of counsel or extenuating circumstances make it impossible for counsel
17 to continue to represent the child. In any situation under sub. (2), ~~(2g)~~, or (2m) in
18 which a parent 18 years of age or over or an adult expectant mother is entitled to
19 representation by counsel; counsel is not knowingly and voluntarily waived; and it
20 appears that the parent or adult expectant mother is unable to afford counsel in full,
21 or the parent or adult expectant mother so indicates; the court shall refer the parent
22 or adult expectant mother to the authority for indigency determinations specified
23 under s. 977.07 (1). In any other situation under this section in which a person has

1 a right to be represented by counsel or is provided counsel at the discretion of the
2 court, competent and independent counsel shall be provided and reimbursed in any
3 manner suitable to the court regardless of the person's ability to pay, except that the
4 court may not order a person who files a petition under s. 813.122 or 813.125 to
5 reimburse counsel for the child who is named as the respondent in that petition.

6 **SECTION 44.** 48.235 (4) (a) 7. of the statutes is amended to read:

7 48.235 (4) (a) 7. Petition for relief from a judgment terminating parental rights
8 under s. 48.46 or 48.47.

9 **SECTION 45.** 48.235 (4m) (a) 7. of the statutes is amended to read:

10 48.235 (4m) (a) 7. Petition for relief from a judgment terminating parental
11 rights under s. 48.46 or 48.47 after the child is born.

12 **SECTION 46.** 48.243 (3) of the statutes is amended to read:

13 48.243 (3) If the child or expectant mother has not had a hearing under s. 48.21
14 or 48.213 and was not present at an intake conference under s. 48.24, the intake
15 worker shall ~~inform~~ notify the child, parent, guardian ~~and~~, legal custodian, and
16 Indian custodian, or expectant mother, as appropriate, of the basic rights provided
17 under this section. The notice shall be given verbally, either in person or by
18 telephone, and in writing. ~~This~~ The notice shall be given ~~so as~~ in sufficient time to
19 allow the child, parent, guardian, legal custodian, Indian custodian, or adult
20 expectant mother ~~sufficient time~~ to prepare for the plea hearing. This subsection
21 does not apply to cases of informal disposition under s. 48.245.

22 **SECTION 47.** 48.255 (1) (cm) of the statutes is amended to read:

23 48.255 (1) (cm) Whether the child may be subject to the federal Indian ~~child~~
24 ~~welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject

1 to that act, the names and addresses of the child's Indian custodian, if any, and
2 Indian tribe, if known.

3 **SECTION 48.** 48.255 (1) (g) of the statutes is created to read:

4 48.255 (1) (g) If the child is or may be an Indian child, reliable and credible
5 information showing that continued custody of the child by the child's parent or
6 Indian custodian is likely to result in serious emotional or physical damage to the
7 child and reliable and credible information showing that the person who took the
8 child into custody and the intake worker have made active efforts to prevent the
9 breakup of the Indian family and that those efforts have proved unsuccessful.

NOTE: The DHFS draft uses language borrowed from the Adoption and Safe Families Act (ASFA), *i.e.*, "continued placement in the home" and "efforts to prevent removal from the home." ICWA, however, refers to "continued custody by the parent or Indian custodian" and "efforts to prevent the breakup of the Indian family." This draft uses the ICWA language.

10 **SECTION 49.** 48.255 (1m) (d) of the statutes is amended to read:

11 48.255 (1m) (d) Whether the unborn child, when born, may be subject to the
12 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the unborn child may
13 be subject to that act, the name and address of the Indian tribe in which the unborn
14 child may be eligible for membership when born, if known.

15 **SECTION 50.** 48.255 (1m) (g) of the statutes is created to read:

16 48.255 (1m) (g) If the expectant mother is or may be an Indian child, reliable
17 and credible information showing that continued custody of the child expectant
18 mother by her parent or Indian custodian is likely to result in serious emotional or
19 physical damage to the child expectant mother and reliable and credible information
20 showing that the person who took the child expectant mother into custody and the
21 intake worker have made active efforts to prevent the breakup of the Indian family
22 and that those efforts have proved unsuccessful.

1 **SECTION 51.** 48.255 (2) of the statutes is amended to read:

2 48.255 (2) If any of the facts required under sub. (1) (a) to (cm) ~~and, (f), and (g)~~
3 or (1m) (a) to (d) ~~and, (f), and (g)~~ are not known or cannot be ascertained by the
4 petitioner, the petition shall so state.

5 **SECTION 52.** 48.255 (4) of the statutes is amended to read:

6 48.255 (4) A copy of a petition under sub. (1) shall be given to the child if the
7 child is 12 years of age or over and to the parents, guardian, legal custodian and
8 physical custodian. A copy of a petition under sub. (1m) shall be given to the child
9 expectant mother, if 12 years of age or over, her parents, guardian, legal custodian
10 and physical custodian and the unborn child by the unborn child's guardian ad litem
11 or to the adult expectant mother, the unborn child through the unborn child's
12 guardian ad litem and the physical custodian of the expectant mother, if any. ~~A If~~
13 the child is an Indian child or the unborn child may be an Indian child when born,
14 a copy of a petition under sub. (1) or (1m) shall also be given to the tribe or band with
15 ~~which the child is affiliated or~~ Indian child's Indian custodian and tribe or the Indian
16 tribe with which the unborn child may be eligible for ~~affiliation~~ membership when
17 born, ~~if the child is an Indian child or the unborn child may be an Indian child when~~
18 born.

19 **SECTION 53.** 48.27 (3) (a) 1. of the statutes is amended to read:

20 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
21 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
22 who is a child, the court shall ~~also~~ notify, under s. 48.273, the child, any parent,
23 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
24 or other physical custodian described in s. 48.62 (2) of the child, the unborn child by
25 the unborn child's guardian ad litem, if applicable, and any person specified in par.

1 (b), (d), or (e), if applicable, of all hearings involving the child except hearings on
2 motions for which notice ~~need only~~ must be provided only to the child and his or her
3 counsel. ~~When~~ If parents who are entitled to notice have the same place of residence,
4 notice to one ~~shall constitute~~ constitutes notice to the other. The first notice to any
5 interested party, foster parent, treatment foster parent, or other physical custodian
6 described in s. 48.62 (2) shall be ~~written~~ in writing and may have a copy of the petition
7 attached to it. ~~Thereafter, notice of~~ Notices of subsequent hearings may be given by
8 telephone at least 72 hours before the time of the hearing. The person giving
9 telephone notice shall place in the case file a signed statement of the time notice was
10 given and the person to whom he or she spoke.

11 **SECTION 54.** 48.27 (3) (d) of the statutes is amended to read:

12 48.27 (3) (d) If the petition that was filed relates to facts concerning a situation
13 under s. 48.13 involving an Indian child or a situation under s. 48.133 ~~concerning~~
14 involving an unborn child who, when born, will be an Indian child, the court shall
15 notify, under s. 48.273, the Indian child's Indian custodian and tribe or the Indian
16 tribe or band with which the unborn child ~~will be affiliated~~ may be eligible for
17 membership when born and that Indian custodian or tribe or band may, ~~at the court's~~
18 discretion, intervene at any point in the proceeding ~~before the unborn child is born.~~

19 **SECTION 55.** 48.27 (4) (a) 2. of the statutes is amended to read:

20 48.27 (4) (a) 2. Advise the child and any party, if applicable, of his or her right
21 to legal counsel regardless of ability to pay.

22 **SECTION 56.** 48.273 (1) of the statutes is renumbered 48.273 (1) (a) and
23 amended to read:

1 48.273 (1) (a) Service of summons or notice required by s. 48.27 may be made
2 by mailing a copy thereof of the summons and notice to the ~~persons~~ person
3 summoned or notified. If

4 ~~(ar) Except as provided in par. (b), if the persons fail~~ person fails to appear at
5 the hearing or otherwise to acknowledge service, a continuance shall be granted,
6 ~~except where the court determines otherwise because the child is in secure custody,~~
7 and service shall be made personally by delivering to the ~~persons~~ person a copy of the
8 summons or notice; except that if the court ~~is satisfied~~ determines that it is
9 impracticable to serve the summons or notice personally, ~~it~~ the court may ~~make an~~
10 order ~~providing for the service of the summons or notice~~ by certified mail addressed
11 to the last-known ~~addresses~~ address of the ~~persons.~~ person.

12 **(b)** The court may refuse to grant a continuance when the child is being held
13 in secure custody, but ~~in such a case the court~~ if the court so refuses, the court shall
14 order that service of notice of the next hearing be made personally or by certified mail
15 to the last-known address of the person who failed to appear at the hearing.

16 **(c)** Personal service shall be made at least 72 hours before ~~the time of the~~
17 hearing. Mail shall be sent at least 7 days before ~~the time of the hearing, except~~
18 where as follows:

19 1. When the petition is filed under s. 48.13 and the person to be notified lives
20 outside the state, ~~in which case the mail shall be sent at least 14 days before the time~~
21 of the hearing.

22 **SECTION 57.** 48.273 (1) (ag) of the statutes is created to read:

23 48.273 (1) (ag) Service of summons or notice required by s. 48.27 to an Indian
24 child's parent, Indian custodian, or tribe, or to the Indian tribe in which an unborn
25 child who may be an Indian child when born may be eligible for membership when

1 born, shall be made by mailing by registered mail, return receipt requested, a copy
2 of the summons or notice, together with notice of the person's right to intervene in
3 the proceeding, to the person summoned or notified or, if the identity or location of
4 the Indian child's parent, Indian custodian, or tribe cannot be determined, to the U.S.
5 secretary of the interior. As provided in 25 USC 1912 (a), the U.S. secretary of
6 interior shall have 15 days after receipt of the summons or notice to provide the
7 requisite notice to the Indian child's parent, Indian custodian, and tribe.

8 **SECTION 58.** 48.273 (1) (c) 2. of the statutes is created to read:

9 48.273 (1) (c) 2. When a petition under s. 48.13 involves an Indian child and
10 the person to be notified is the Indian child's parent, Indian custodian, or tribe or
11 when a petition under s. 48.133 involves an unborn child who, when born, may be an
12 Indian child and the person to be notified is the child's expectant mother or the
13 Indian tribe with which the unborn child may be eligible for membership when born,
14 the mail shall be sent so that it is received by the person to be notified, or by the U.S.
15 secretary of interior, at least 10 days before the time of the hearing.

16 **SECTION 59.** 48.299 (6) (d) of the statutes is amended to read:

17 48.299 (6) (d) The court may stay the proceedings under this chapter pending
18 the outcome of the paternity proceedings under ss. 767.45 to 767.60 if the court
19 determines that the paternity proceedings will not unduly delay the proceedings
20 under this chapter and the determination of paternity is necessary to the court's
21 disposition of the child if the child is found to be in need of protection or services or
22 if the court determines that the paternity proceedings may result in a finding that
23 the child is an Indian child and in a petition by the child's parent, Indian custodian,
24 or tribe for transfer of the proceeding to the jurisdiction of the tribe.

25 **SECTION 60.** 48.299 (9) of the statutes is created to read:

1 48.299 (9) If at any point in the proceeding the court determines that the child
2 is or may be an Indian child or that the unborn child, when born, may be an Indian
3 child, the court shall provide notice of the proceeding to the child's parent, Indian
4 custodian, and tribe, or to the expectant mother and the Indian tribe in which the
5 unborn child may be eligible for membership when born, in the manner specified in
6 s. 48.273 (1) (ag). The next hearing in the proceeding may not be held until at least
7 10 days after receipt of the notice by the parent, Indian custodian, and tribe or by the
8 expectant mother and tribe. On request of the parent, Indian custodian, expectant
9 mother, or tribe, the court shall grant a continuance of up to 20 additional days to
10 enable the requester to prepare for that hearing.

NOTE: At numerous places throughout ss. 48.30 to 48.31 the DHFS draft repeats essentially the same language requiring notice under 25 USC 1912 (a) to be provided to an Indian child's parent, Indian custodian, and tribe. Rather than unduly lengthen an already lengthy chapter by repeating essentially the same language over and over again, this draft consolidates that language into one section applicable throughout.

11 **SECTION 61.** 48.30 (1) of the statutes is amended to read:

12 48.30 (1) Except as provided in ~~this subsection~~ s. 48.299 (9), the hearing to
13 determine whether any party wishes to contest an allegation that the child or unborn
14 child is in need of protection or services shall take place on a date which allows
15 reasonable time for the parties to prepare but is within 30 days after the filing of a
16 petition for a child or an expectant mother who is not being held in secure custody
17 or within 10 days after the filing of a petition for a child who is being held in secure
18 custody.

19 **SECTION 62.** 48.30 (2) of the statutes is amended to read:

20 48.30 (2) At the commencement of the hearing under this section the child and
21 the parent, guardian ~~or~~, legal custodian, or Indian custodian; the child expectant
22 mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian, and the unborn

1 child through the unborn child's guardian ad litem; or the adult expectant mother
2 and the unborn child through the unborn child's guardian ad litem; shall be advised
3 of their rights as specified in s. 48.243 and shall be informed that a request for a jury
4 trial or for a substitution of judge under s. 48.29 must be made before the end of the
5 plea hearing or be is waived. Nonpetitioning parties, including the child, shall be
6 granted a continuance of the plea hearing if they wish to consult with an attorney
7 on the request for a jury trial or substitution of a judge.

8 **SECTION 63.** 48.30 (6) (a) of the statutes is amended to read:

9 48.30 (6) (a) If a petition is not contested, the court, subject to s. 48.299 (9), shall
10 set a date for the dispositional hearing which allows reasonable time for the parties
11 to prepare but is no more than 10 days after the plea hearing for a child who is held
12 in secure custody and no more than 30 days after the plea hearing for a child or an
13 expectant mother who is not held in secure custody. If all parties consent the court
14 may proceed immediately with the dispositional hearing.

15 **SECTION 64.** 48.30 (7) of the statutes is amended to read:

16 48.30 (7) If the petition is contested, the court, subject to s. 48.299 (9), shall set
17 a date for the fact-finding hearing which allows reasonable time for the parties to
18 prepare but is no more than 20 days after the plea hearing for a child who is held in
19 secure custody and no more than 30 days after the plea hearing for a child or an
20 expectant mother who is not held in secure custody.

21 **SECTION 65.** 48.305 of the statutes is amended to read:

22 **48.305 Hearing upon the involuntary removal of a child or expectant**
23 **mother.** Notwithstanding other time periods for hearings under this chapter, if a
24 child is removed from the physical custody of the child's parent or guardian under
25 s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or

1 if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2.
2 without the consent of the expectant mother, the court, subject to s. 48.299 (9), shall
3 schedule a plea hearing and fact-finding hearing within 30 days after a request from
4 the parent or guardian from whom custody was removed or from the adult expectant
5 mother who was taken into custody. The plea hearing and fact-finding hearing may
6 be combined. This time period may be extended only with the consent of the
7 requesting parent, guardian or expectant mother.

8 **SECTION 66.** 48.31 (1) of the statutes is amended to read:

9 48.31 (1) In this section, “fact-finding hearing” means a hearing to determine
10 if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate
11 parental rights are proved by clear and convincing evidence and, in the case of a
12 petition to terminate parental rights to an Indian child, to determine if it is proved
13 beyond a reasonable doubt, including the testimony of one or more qualified expert
14 witnesses, that the continued custody of the Indian child by the parent or Indian
15 custodian is likely to result in serious emotional or physical damage to the child and
16 if it is proved beyond a reasonable doubt that active efforts have been made to
17 prevent the breakup of the Indian family and that those efforts have proved
18 unsuccessful.

NOTE: ICWA is ambiguous as to whether both serious damage and active efforts must be proved beyond a reasonable doubt in order to TPR. In *In Re Interest of DSP*, 166 Wis. 2d 464 (1992), the Wisconsin Supreme Court held that both serious damage and active efforts must be proved beyond a reasonable doubt in order to TPR.

19 **SECTION 67.** 48.31 (7) (a) of the statutes is amended to read:

20 48.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.
21 48.299 (9), shall set a date for the dispositional hearing which allows a reasonable
22 time for the parties to prepare but is no more than 10 days after the fact-finding
23 hearing for a child in secure custody and no more than 30 days after the fact-finding

1 hearing for a child or expectant mother who is not held in secure custody. If all parties
2 consent, the court may immediately proceed with a dispositional hearing.

3 **SECTION 68.** 48.315 (1) (j) of the statutes is created to read:

4 48.315 (1) (j) A reasonable period of delay, not to exceed 20 days, in a proceeding
5 involving the out-of-home care placement of or termination of parental rights to a
6 child who is or may be an Indian child, or involving an unborn child who, when born,
7 may be an Indian child, resulting from a continuance granted at the request of the
8 child's parent, Indian custodian, or tribe, or of the unborn child's expectant mother
9 or the Indian tribe in which unborn child may be eligible for membership when born,
10 to enable the requester to prepare for the proceeding.

NOTE: 25 USC 1912 (1) limits the continuance to prepare for a hearing to 20 days.

11 **SECTION 69.** 48.315 (1m) of the statutes is amended to read:

12 48.315 (1m) Subsection (1) (a), (d), (e) ~~and, (fm), (g), and (j)~~ does not apply to
13 proceedings under s. 48.375 (7).

14 **SECTION 70.** 48.315 (2) of the statutes is amended to read:

15 48.315 (2) A continuance shall be granted by the court only upon a showing of
16 good cause in open court or during a telephone conference under s. 807.13 on the
17 record and only for so long as is necessary, taking into account the request or consent
18 of the district attorney or the parties, the request of a person specified in sub. (1) (j),
19 and the interest of the public in the prompt disposition of cases.

20 **SECTION 71.** 48.32 (1) (c) 1. of the statutes is renumbered 48.32 (1) (c) and
21 amended to read:

22 48.32 (1) (c) If the judge or circuit court commissioner finds that any of the
23 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
24 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m)

1 within 30 days after the date of that finding to determine the permanency plan for
2 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
3 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
4 ~~than 5 days before the date of the hearing.~~

5 **SECTION 72.** 48.32 (1) (c) 2. of the statutes is repealed.

6 **SECTION 73.** 48.32 (1) (c) 3. of the statutes is repealed.

7 **SECTION 74.** 48.33 (4) (d) of the statutes is created to read:

8 48.33 (4) (d) If the agency knows or has reason to know that the child is an
9 Indian child, a description of any efforts undertaken to determine whether the child
10 is an Indian child, specific information showing that continued custody of the child
11 by the parent or Indian custodian is likely to result in serious emotional or physical
12 damage to the child, and specific information showing that the county department,
13 department in a county having a population of 500,000 or more, or agency primarily
14 responsible for providing services to the child has made active efforts to prevent the
15 breakup of the Indian family and that those efforts have proved unsuccessful.

NOTE: The DHFS draft requires the court report to set forth any response by the Indian tribe regarding the interest of the tribal court in exercising jurisdiction. Under 25 USC 1911 (b), however, the remedy for a tribe that wishes to exercise jurisdiction is not to express interest to the agency. Rather, the tribe's remedy is to petition for transfer of jurisdiction. Accordingly, this draft does not require a court report to set forth the tribe's interest in exercising jurisdiction.

The DHFS draft also requires documentation that the placement preferences were followed. That documentation, however, is included in the permanency plan, which is already included in the court report under s. 48.33 (4) (a). Accordingly, this draft does not repeat that requirement in s. 48.33 (4) (d).

16 **SECTION 75.** 48.335 (3j) of the statutes is created to read:

17 48.335 (3j) At hearings under this section involving an Indian child, if the
18 agency, as defined in s. 48.38 (1) (a), is recommending placement of the Indian child
19 in a foster home, treatment foster home, group home, or residential care center for

1 children and youth or in the home of a relative other than a parent, the agency shall
2 present as evidence specific information showing all of the following:

3 (a) That continued custody of the Indian child by the parent or Indian custodian
4 is likely to result in serious emotional or physical damage to the Indian child.

5 (b) That the county department, the department in a county having a
6 population of 500,000 or more, or the agency primarily responsible for providing
7 services to the Indian child has made active efforts to prevent the breakup of the
8 Indian family and that those efforts have proved unsuccessful.

9 **SECTION 76.** 48.345 (3) (intro.) of the statutes is amended to read:

10 48.345 (3) (intro.) ~~Designate~~ Subject to sub. (3m), designate one of the following
11 as the placement for the child:

12 **SECTION 77.** 48.345 (3m) of the statutes is created to read:

13 48.345 (3m) (a) Subject to pars. (b) to (e), if the child is an Indian child who is
14 being placed in an out-of-home care placement, designate one of the following as the
15 placement for the Indian child, in the order of preference listed:

- 16 1. The home of an extended family member of the Indian child.
- 17 2. A foster home or treatment foster home licensed, approved, or specified by
18 the Indian child's tribe.
- 19 3. An Indian foster home or treatment foster home licensed or approved by the
20 department, a county department, or a child welfare agency.
- 21 4. A group home or residential care center for children and youth approved by
22 an Indian tribe or operated by an Indian organization that has a program suitable
23 to meet the needs of the Indian child.

24 (b) If the Indian child's tribe has established, by resolution, an order of
25 preference that is different from the order specified in par. (a), the judge shall follow

1 the order of preference established by that tribe so long as the placement is the least
2 restrictive setting appropriate for the child's needs as specified in par. (e).

3 (c) The judge may depart from the order of preference specified in par. (a) or (b)
4 for good cause shown.

5 (d) The standards to be applied in meeting the placement preference
6 requirement of this subsection shall be the prevailing social and cultural standards
7 of the Indian community in which the Indian child's parents or extended family
8 members reside or with which the Indian child's parents or extended family members
9 maintain social and cultural ties.

10 (e) In designating a placement under this subsection, the judge shall designate
11 a placement that is the least restrictive setting that most approximates a family, that
12 meets the Indian child's special needs, if any, and that is within reasonable proximity
13 to the Indian child's home, taking into account those special needs.

14 **SECTION 78.** 48.355 (2) (b) 6v. of the statutes is created to read:

15 48.355 (2) (b) 6v. If the child is an Indian child who is placed outside the home,
16 a finding supported by clear and convincing evidence, including the testimony of one
17 or more qualified expert witnesses, that continued custody of the Indian child by the
18 parent or Indian custodian is likely to result in serious emotional or physical damage
19 to the child and a finding supported by clear and convincing evidence as to whether
20 the county department, department in a county having a population of 500,000 or
21 more, or agency primarily responsible for providing services under a court order has
22 made active efforts to prevent the breakup of the Indian family and that those efforts
23 have proved unsuccessful.

24 **SECTION 79.** 48.355 (2) (d) of the statutes is amended to read:

1 48.355 (2) (d) The court shall provide a copy of a dispositional order relating
2 to a child in need of protection or services to the child's parent, guardian, legal
3 custodian, or trustee, to the child through the child's counsel or guardian ad litem
4 and, to the child's court-appointed special advocate, and, if the child is an Indian
5 child, to the Indian child's Indian custodian and tribe. The court shall provide a copy
6 of a dispositional order relating to an unborn child in need of protection or services
7 to the expectant mother, to the unborn child through the unborn child's guardian ad
8 litem and, if the expectant mother is a child, to her, to the parent, guardian, legal
9 custodian, or trustee of a child expectant mother, and, if the expectant mother is an
10 Indian child or if the unborn child, when born may be an Indian child, to the
11 expectant mother's Indian custodian and tribe or to the Indian tribe in which the
12 unborn child may be eligible for membership when born.

13 **SECTION 80.** 48.355 (2c) (title) of the statutes is amended to read:

14 48.355 (2c) (title) REASONABLE EFFORTS AND ACTIVE EFFORTS STANDARDS.

15 **SECTION 81.** 48.355 (2c) (c) of the statutes is created to read:

16 48.355 (2c) (c) When a court makes a finding under sub. (2) (b) 6v. as to whether
17 the county department, department in a county having a population of 500,000 or
18 more, or agency primarily responsible for providing services to an Indian child under
19 a court order has made active efforts to prevent the breakup of the Indian family, the
20 court's consideration of active efforts shall include the considerations listed under
21 par. (a) 1. to 5., whether visitation schedules between the Indian child and his or her
22 parents or Indian custodian were implemented, unless visitation was denied or
23 limited by the court, whether the order of preference for placement of the Indian child
24 under s. 48.345 (3m) was followed, and whether the services provided to the Indian
25 child and his or her family were culturally responsive to their needs.